

ATTORNEY DOCKET NO.
97RSS178C

PATENT
Customer ID No. 33649

REMARKS

In an office action mailed June 23, 2004 (Paper No. 3), claims 21-32 and 34-40 were rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-20 of U.S. Patent No. 6,360,085. Claims 21, 22, 25, 27-32 and 34-40 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,448,756 granted to DeLuca. Claims 26 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over DeLuca. These rejections are respectfully traversed. Claims 39 and 40 have been cancelled without prejudice or disclaimer, and new claims 41 and 42 have been provided for examination.

Double Patenting Rejection

In regards to the assertion that claims 21-30 encompass all of the limitations of 6,360,085, the Applicant notes that claim 21 includes a "system for receiving a signal comprising: a receiver receiving the signal; an interference avoidance system coupled to the receiver, the interference avoidance system turning the receiver off and on at a controllable frequency; and wherein the interference avoidance system applies a first duty cycle if interference is present and a second duty cycle if interference is not present." This is different from claim 1 of 6,360,085, which includes a "system for receiving a signal comprising: a receiver operable to receive the signal; a duty cycle system coupled to the receiver, the duty cycle system operable to turn the receiver off and on at a controllable frequency; an interference avoidance system coupled to the duty cycle system and a signal output, wherein the interference avoidance system generates status data that causes the duty cycle system to change from a first preset duty cycle to a second preset duty cycle and provides the status data to the duty cycle system; and a signal strength system coupled to the receiver and the duty cycle system, the signal strength system operable to determine the signal strength of the signal received by the receiver, to generate control commands based upon the signal strength, and to transmit the control commands to the duty cycle system." Some of the differences between claim 21 and claim 1 have been emphasized, and it can be clearly seen that claim 21 is considerably different from claim 1. The same can be said in regards to the double patenting rejection of claims 22-32 and 34-40. Applicant does recognize that this pending application is a continuation of 6,360,085, and as such, is subject to the term limitation defined by the filing date of the 6,360,085 patent. For this reason only, a terminal disclaimer is being provided. In doing

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so, however, the Applicant does not concede that the scope of the claims has been properly defined by the Examiner in the double patenting rejection.

Rejections under 35 U.S.C. 102

Claims 21, 22, 25, 27-32 and 34-40 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,448,756 granted to DeLuca. In particular, it is alleged that DeLuca discloses an interference avoidance system which applies a first duty cycle if interference is present and a second duty cycle if interference is not present. Applicant notes that in the reasons for allowance of U.S. Patent No. 6,360,085, the examiner stated that "the cited prior art [DeLuca] fails to disclose or render obvious the combination of a duty cycle system, interference avoidance system and signal strength system as specified in the claims." Claim 21 includes a "system for receiving a signal comprising: a receiver receiving the signal; an interference avoidance system coupled to the receiver, the interference avoidance system turning the receiver off and on at a controllable frequency; and wherein the interference avoidance system applies a first duty cycle if interference is present and a second duty cycle if interference is not present." Thus, it has essentially been conceded by the PTO that DeLuca does not disclose or render obvious the claimed invention. However, the specific teachings of DeLuca will be reviewed to further explain why DeLuca fails to disclose each element of the claimed invention.

Nowhere in DeLuca is the term "interference" used. At column 3, lines 10-60 and column 4, lines 36-64 of DeLuca, it is stated that the "quality of the signal is indicative of the power of the received radio frequency signal at the antenna plus distortions introduced by the receiving process. In general, a high quality signal is indicative of a receiver being close to a transmitter, while distortions in the signal introduced either by noise as a result of the receiver being far away from the transmitter or distortions generated by the receiver are indicative of a low quality signal." No mention is made of interference – while interference can result in a poor quality signal, it is simply not disclosed or even suggested by DeLuca. Furthermore, an interference avoidance system is not a quality detector – it detects interference. Signal strength system 110 of the pending application is closer to the quality detector 42 of DeLuca – as noted in the specification at page 9, lines 17 through 21, "Signal strength system 110 is also operable to compare the measured signal strength to predetermined signal strength values that may be

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empirically determined as corresponding to acceptable noise levels at which noise suppression circuitry is not required." The Examiner has improperly construed "interference avoidance system" to be the same as signal strength system – they are different systems with different functions.

Likewise, claim 31 includes a "system for avoiding interference comprising: a signal input receiving a signal and determining whether interference is present; and a receiver cycling output outputting control data for turning a receiver on and off based on whether interference is present." Again, the complete absence of any teaching of detecting whether interference is present in DeLuca prevents it from being used to reject claim 31 under 35 U.S.C. 102(b).

Claim 35 as amended includes a "method for processing a signal comprising: receiving interference status data; cycling a receiver component according to a first duty cycle if the interference status data indicates that the signal includes an interfering signal and cycling the receiver component according to a second duty cycle if the interference status data indicates that the signal includes the interfering signal. Again, claim 35 makes it clear that an interfering signal and not noise is being detected.

New claims 41 and 42 further emphasize this distinction between noise and an interfering signal, further distinguishing the claimed invention from DeLuca.

Rejections under 35 U.S.C. 103

Claims 26 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DeLuca. The Examiner admits in regards to claim 26 that DeLuca does not disclose an automatic gain control stage controlling a gain of amplification of the signal, and a duty cycle system coupled to the automatic gain control stage and turning the automatic gain control stage on and off. Likewise, the Examiner admits that DeLuca fails to disclose a spread spectrum signal. However, merely alleging that it would have been obvious to add these features to DeLuca does not meet the Examiner's burden under 35 U.S.C. 103 – there must be a motivation to add the features. In regards to claim 26, the automatic gain control is added to improve the ability to avoid interference, not to control a gain of amplification, as alleged by the Examiner. As discussed previously, DeLuca entirely fails to disclose avoiding interference, and the Examiner has also failed to explain why one of ordinary skill would be motivated to add automatic gain control to the system of DeLuca, which concerns a high frequency battery saver

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for a radio receiver that operates without the need for automatic gain control. The burden is on the Examiner to explain how automatic gain control would be used in DeLuca, and for what reason, not merely to assert that it can somehow be combined. Thus, for these reasons, DeLuca fails to provide a prima facie basis for the rejection of claim 26.

In regards to claim 33, DeLuca again fails to disclose detecting interference, and detection of interference in a spread spectrum system is unrelated to the detection of noise in DeLuca. Furthermore, the burden is on the examiner to explain the motivation for modifying DeLuca to include spread spectrum signals – DeLuca is addressed to pagers, and the paging radio systems do not generally utilize spread spectrum signals. Thus, for these reasons, DeLuca fails to provide a prima facie basis for the rejection of claim 33.

All dependent claims not specifically addressed are believed to be allowable at least for the reasons that they depend from an allowable base claim and add limitations not present in the prior art. The Applicant reserves the right to specifically traverse these rejections at a later date.

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CONCLUSION

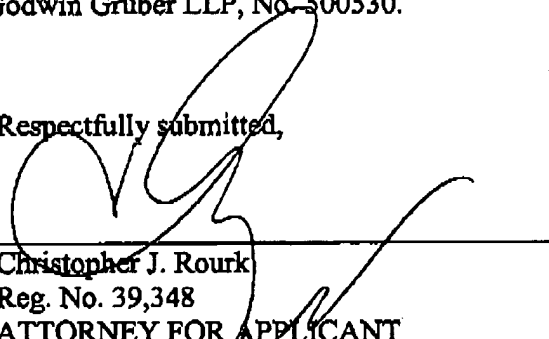
In view of the foregoing remarks and for various other reasons readily apparent, Applicant submits that all of the claims now present are allowable, and withdrawal of the rejection and a Notice of Allowance are courteously solicited.

If any impediment to the allowance of the claims remains after consideration of this amendment, a telephone interview with the Examiner is hereby requested by the undersigned at (214) 939-8657 so that such issues may be resolved as expeditiously as possible.

A response to the pending office action within the one-month extension period was due on October 23, which fell on a Saturday. As such, this response is timely filed within the one month extension of time period on Monday, October 25, 2004. An additional fee of \$110 for a one-month extension of time is believed to be due, for which a petition is hereby made, and the Commissioner is hereby authorized to charge this fee as well as the fee for a statutory disclaimer of \$110 to the deposit account of Godwin Gruber LLP, No. 500530. If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Godwin Gruber LLP, No. 500530.

Respectfully submitted,

Date: October 25, 2004



Christopher J. Rourke
Reg. No. 39,348
ATTORNEY FOR APPLICANT

GODWIN GRUBER LLP
1201 Elm Street, Suite 1700
Dallas, TX 75270
Direct: 214-939-8657
Fax: 214-760-7332
Email: crourke@godwingruber.com